IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 180 OF 2000 AND FIRST APPEAL NO. 25 OF 2001

FIRST APPEAL NO. 180 OF 2000

1. Kum. Josefine Rodrigues,
   major,

2. Kum. Peter Rodrigues,

3. Kum. Geeta Rodrigues,

4. Kum. Ana Rodrigues,
   all r/o H.No.510,
   Nagwaddo, Betalbatim,
   Salcete, Goa. Applicants
   2 to 4 are minors, represented
   by their guardian Shri San
   Joao Rodrigues, r/o Nagwaddo,
   Betalbatim, Salcete, Goa. ...Appellants.

Versus

1. Shri Puno Dattaram Naik,
   r/o Chavdi, Usgao,

2. Shri Shanu Bobuso Naik,
   r/o Durgabhat, Ponda, Goa, and

3. National Insurance Co.,
   Bicholim, Goa. ...Respondents.

Shri S. D. Lotlikar, Senior Advocate with Shri A. D. Bhobe, advocate for the appellants.

Shri J. Godinho, advocate for respondent nos. 1 and 2.

Shri J. P. Mulgaokar, advocate for respondent no.3.

FIRST APPEAL NO. 25 OF 2001

1. Puno Dattaram Naik,
   r/o Chavdi, Usgao, and

2. Shamu Babuso Naik,
   r/o Durgabhat, Ponda., ...Appellants.

Versus

1. National Insurance Co.,
   Bicholim, Goa,

2. Kum. Josefine Rodrigues,

3. Shri Peter Rodrigues,

4. Kum. Geeta Rodrigues, and

5. Kum. Ana Francisca Rodrigues,
all represented by their Guardian
Shri San Joao Rodrigues, r/o
Nagwado, Betalbatim,
Salcete, Goa. ...Respondents.

Shri J. Godinho, advocate for the appellants.

Shri J. P. Mulgaokar, advocate for respondent no.1.

Shri S. D. Lotlikar, Senior Advocate with Shri A. D. Bhobe, advocate for respondent nos.2 to 5.

CORAM : F. I. REBELLO, J.

DATE : 26th June, 2003.

ORAL JUDGMENT

Heard parties. Considering the evidence on record, the monthly income of the deceased can safely be said to be Rs.2,000/-. From that can be added one-third of the amount. The dependency can be worked out to Rs.16,000/- annually. At the time of death, the deceased was aged 42 years. Therefore applying a multiplier of 15 the amount works out to Rs.2,40,000/-.

2. The learned Presiding Officer of the Motor Accident Claims Tribunal, discharged the insurance company from liability eventhough the driver had a driving licence. The learned Presiding Officer proceeded on the footing that the mini bus in respect of which the accident occurred, is a heavy vehicle. There was no material whatsoever on record to show that it could be so designated. The vehicle was a Matador mini bus. That the driving licence was not a valid licence for driving heavy vehicle, was not a ground taken by

the Insurance Company in its defence statement. The defence was that the driver did not have a valid driving licence without any other details. In these circumstances that finding of the learned Presiding Officer will have to be reversed. The burden to prove that the driver had no valid driving licence was on the Insurance Company. Accordingly, the Appeal insofar as this point is concerned also, will have to be allowed and the liability of the Insurance Company will be joint and several with respondent nos.1 and 2. As there is an insurance policy, respondent no.3 will have to indemnify respondent nos. 1 and 2 for the said amount.

3. Under the other heads of loss of consortium, pain and suffering, loss to the estate and funeral expenses, the maximum amount which could be awarded would be Rs.9,500/-. The Motor Accident Claims Tribunal awarded Rs.2,500/-. Therefore, to the amount of Rs.2,40,000/- is awarded a further sum of Rs.8,000/-. The sum as now increased will be Rs.2,48,000/- and carry the same interest and costs as awarded by the Claims Tribunal.

4. For the aforesaid reasons the Appeal is allowed in a sum of Rs.2,48,000/- (rupees two lakhs forty eight thousand only) jointly and severally against respondent nos.1 to 3. Apportionment to be made amongst the appellants in the following manner:-

The Tribunal has awarded the amount equally amongst the four appellants. The amount awarded will have to be apportioned amongst the appellant nos.1, 2, 3 and 4 in equal proportions. The appellants are majors. The said amount will have to be apportioned equally amongst all the appellants alongwith proportionate amount of costs. The amount as awarded will carry the same interest as awarded by the Claims Tribunal at the rate of 11%. The respondent no.3 is directed to deposit the amount before the Claims Tribunal within twelve weeks from today. When the amounts so awarded are deposited the amount to be disbursed to the appellants herein.

5. Considering that First Appeal No. 180/2000 has been disposed of, nothing survives in First Appeal No.25 of 2001, which is accordingly also disposed of.

F. I. REBELLO, J.

mc.